

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3839 of 1985

WITH

SPECIAL CIVIL APPLICATION No 3926 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANCHANBEN NANALAL JOSHI

Versus

STATE OF GUJARAT

Appearance: (In both SCAs)

MR DU SHAH for Petitioners

MR VB GHARANIA for Respondent-State

MR DM THAKKAR for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioners challenge the Town Planning Scheme No.1 pertaining to widening of Kalawad road, Rajkot, in so far as it affects the petitioners' land

bearing Final Plot Nos. 32 and 33.

3. The learned counsel for the petitioners raised twofold contentions before this Court in these petitions. The first contention has been raised that if the extension of the road was necessary, it should have been done both sides taking centre of the road, which has not been done in the present case. It has next been contended that Shri Jayantilal Mehta's land was not touched, which is malafide.

4. On the other hand, the learned counsel for the respondents No. 2 and 3 submitted that the final Town Planning Schemes framed under the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the Act, 1976) and Rules 1979, are not open to judicial review except on the grounds as laid down by this Court in the case of Shilpa Park Cooperative Housing Society Ltd. v. Surat Urban Development Authority & Ors., reported in 1996(2) GLH 287. It has next been contended that the aforesaid Act or Rules framed thereunder nowhere provide that while undertaking the widening of the road in the Town Planning Scheme, it has to be done both sides. In absence of any such Rule or provision, the petitioners have no case whatsoever in their favour. Shri D.M. Thakkar further contended that towards the side where house of Shri Jayantilal Mehta was situated, open land was not available and as such, the only land towards the side of the petitioners was taken up for widening of the road. Replying the contention of the learned counsel for the petitioners regarding malafides, the learned counsel for the respondents Shri Thakkar contended that neither the officer concerned nor Shri Jayantilal Mehta has been impleaded as a party and as such this plea was not open to the petitioners. It has next been contended that the scheme is a statutory scheme and as such, the same is not challengeable on the ground of malafide. Lastly Shri Thakkar contended that there is no question of malafides as Shri Jayantilal Mehta has constructed his building without leaving any open land towards the road side and the officers, while finalizing the scheme, take all care to see that the people are put to minimum inconvenience and difficulties. Demolition of the house of Shri Jayantilal would not have been in larger interest whereas towards the petitioners' side, in their plots, sufficient open space was available.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. The learned counsel for the petitioners is unable to show any of the provisions under the Act 1976 or Rules framed thereunder in which it is provided that in any scheme under which road is to be widened, the land has to be taken from both the sides of the centre of the road for that purpose. In absence of any such provision, none of the legal or fundamental rights of the petitioners are infringed. The claim of the petitioners of equality before the law, as guaranteed under Article 14 of the Constitution of India, is wholly misconceived in the present case. The petitioners have admitted that while giving finality to the Town Planning Scheme, the officer concerned should have taken all care that the people may get minimum inconvenience as well as difficulties. The petitioner has admitted in the Special Civil Application No.3839 of 1985 that in the building of Shri Jayantilal Mehta, enough vacant space for the possible widening of the road in future was not there. So, here is a case where in case the road is widened on both the sides, then the building has to be demolished whereas towards the side of the petitioners in their plots, sufficient open land was available. So there is no question of any demolition of the constructed portion. The result of widening of the road is of reduction of area of the petitioners' plots. The respondent concerned has taken all care and avoided demolition of constructed building, as the open land was available for widening the road. That action cannot be said to be illegal or arbitrary, discriminatory or denial of equality before law. It is absolutely reasonable approach which has been taken by the respondents and it has not resulted in causing any prejudice to the petitioners. By framing plan for development of towns something has to be sacrificed by people and they have to give shoulder for development of scheme rather than being touchy about their rights. In the circumstances, the first contention made by the learned counsel for the petitioners cannot be accepted.

7. So far as the second ground of challenge is concerned, I find sufficient merits in the contention of the learned counsel for the respondents No.2 and 3 that the petitioners have failed to make out any case of malafides. The admission made by the petitioners has already been extracted above. The open land was not available in the plot of Shri Jayantilal and widening could have been possible after demolition of the existing building. In view of this fact, the plea of malafide raised by the petitioners cannot be accepted. Merely on this ground, it cannot be said that the action of the respondents to widen the road towards the side of the petitioners' plot is malafide. There is yet another

substantial ground for rejection of second contention of the learned counsel for the petitioners. In a case where the petitioners have come up with the case of malafides, the authority who passed the order and the party which is favoured by such order, are necessary parties. The officer who passed the order, i.e. who framed the scheme in the present case and the person who has been favoured, namely Shri Jayantilal, have not been impleaded as parties to this petition. The petitioners though made allegations of malafides, but they have not impleaded the authority concerned as a party in his personal capacity. The allegations of malafides are to be dealt with in his personal capacity and not official capacity. Only for non joinder of those two persons as party to these petitions, this plea is otherwise also not permissible. A reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of Dr.J.N. Banavalikar v. Municipal Corporation of Delhi & Anr., reported in AIR 1996 SC 326.

8. In the result, these Special Civil Applications fail and the same are dismissed. The petitioners in both the petitions are directed to pay Rs.1,000/- by way of costs of these petitions to respondents No.2 and 3. The learned counsel for the respondents No.2 and 3, Shri D.M. Thakkar submitted that he has no objection in case this amount of costs is ordered to be deposited by the petitioners in the office of the Bar Council of Gujarat, Ahmedabad, in the account of Advocates' Welfare Fund. Order accordingly. The petitioners are directed to deposit Rs.2,000/- by way of costs of this petition in the office of the Bar Council of Gujarat at Ahmedabad under the head, "Advocates' Welfare Fund", within a period of three months from the date of receipt of certified copy of this order. They are further directed to produce before this Court, receipt of deposit of the aforesaid amount. A copy of this order may be sent to the Secretary, Bar Council of Gujarat, Ahmedabad, and in case this order is not complied by the petitioners, it shall be open to the Secretary, Bar Council of Gujarat, Ahmedabad, to take appropriate action as provided provided under law. Interim relief granted by this Court stands vacated. Rule discharged.

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(sunil)